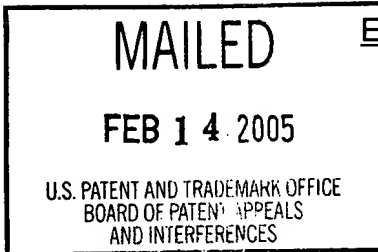


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte JOHN HOLLAND, VALENTIN N. TODOROV,
PATRICK LEAHEY, ROBERT P. HARTLAGE and
HOAN HAI NGUYEN

Application No. 09/774,192

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on November 10, 2004. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

- 1) One of the documents submitted at the time of the filing of the application (January 29, 2001), was an Information Disclosure Statement (IDS). It is not clear from the record whether the examiner considered the statement submitted or whether

the examiner notified appellants of why their submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98. i.e., the 1449 of the IDS has not been initialed/signed/date considered nor was there been any mention of the IDS in subsequent Office actions by the examiner.

2) Appellants submitted a second IDS on July 2, 2003. In an Advisory Action mailed July 21, 2003, the examiner indicated that the IDS had not been considered. (See box 10 of Advisory Action). The appellants **resubmitted** the IDS submitted July 2, 2003 *via* facsimile on September 3, 2003. As in the case of the IDS mentioned above, we find no indication in the record whether the examiner considered the IDS or not.

3) On page 6, paragraph **D.** of the appellants' Reply Brief, filed July 20, 2004, appellants note that the examiner mentions a reference to Fuji et al. on page 7 of the Examiner's Answer which does not appear to be applied in the grounds of rejection nor is it of record in this application. Appellants suggest that the citation may be a typographical error and if not, it is inappropriate. Clarification is required.

Accordingly, it is

Application No. 09/774,192

ORDERED that the application is returned to the examiner for:

consideration of the IDS filed January 29, 2001 **and** the IDS filed July 2, 2003,

notification to appellants in writing of such consideration,

clarification of the citation of the Fuji reference on page 7, last line, of the examiner's answer, and

for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



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CF/vsh
RA05-0202